

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. Existing law sets forth the California Community Care Facilities Act that regulates among other things residential care facilities for children except as specified. Assembly Bill (AB) 1695 (Chapter 653 Statutes of 2001) exempts from that act the approved homes of relatives and nonrelative extended family members when children are placed by the juvenile court. The bill requires that these homes be approved according to specified standards. The Department believes that implementation of AB 1695 is critical to its goal to preserve the best interests of children removed from the home of their biological parents by placing children in safe, stable relative homes which maintain family continuity and keeps siblings together, and to promote implementation of the statutory preference for foster care placement with relative caregivers as set forth in Section 7950 of the Family Code. The successful accomplishment of this goal is dependent on California's continued eligibility for federal Title IV-E funds which provide the necessary support for the State oversight and county implementation of kinship and relative care policies and programs.
2. The federal Department of Health and Human Services (DHHS) has questioned the Department's compliance with the Adoptions and Safe Families Act (ASFA) of 1997 and required California to articulate its existing process to demonstrate how the licensing of non-relative foster parents is the same as the approval of relative caregivers. Implementation of AB 1695 demonstrates to DHHS that California has in place legislation, policy, regulations, and practices that require the approved home of a relative and nonrelative extended family member to meet the same standards for the licensing of foster family homes. Implementation of AB 1695 clarifies that process and will ensure that California's ability to claim Title IV-E funding for placement from the point of judicial removal will be protected and that kinship placements will be approved and supported.
3. ASFA passed in 1997; however, DHHS Administration of Children and Families did not release implementing regulations until January 2000 and they became effective March 2000, with an implementation date of September 2000. Subsequently, there have been numerous discussions between CDSS, DHHS, and the County Welfare Directors Association regarding California's licensing/approval process. This resulted in the urgency legislation (AB 1695) to seek statutory clarification of California's process for licensing/approval of foster family homes. AB 1695 provides that emergency regulations to implement the applicable provisions of this act may be adopted by the Director in accordance with the Administrative Procedures Act.

4. Without these proposed emergency regulations, counties will have no clear policy direction and administrative guidance for making accurate determinations regarding the licensing/approval of foster family homes. DHHS issued federal regulations with interpretations that had not been communicated or made clear. This resulted in varied interpretations within county welfare and probation departments regarding the licensing/approval of foster family homes.
5. Failure to adopt these proposed emergency regulations will subject the Department to a potential annual loss of approximately \$12,700,000 in AFDC-FC/Title IV-E board and care funds and approximately \$7,500,000 for child welfare services administrative costs. This is an annual total loss of \$20,152,947. The availability of federally-funded relative placements, which are often done on an emergency basis without advanced notice or opportunity for preparation, may be significantly reduced. California currently claims Title IV-E funding from the point of the formal detention of an eligible child placed in an approved or licensed foster family home, which is normally within 72 hours of removal from the home of the parent or guardian. Efforts to place children in safe, stable relative homes which maintain family continuity and keeps siblings together, will be seriously undermined if CDSS fails to clarify the licensing/approval of foster family homes mandates efficiently and effectively.
6. The nonemergency rulemaking process set forth in the Administrative Procedures Act is sufficiently lengthy that it is not possible to adopt the necessary state regulations within the timeframes needed in order to provide clarification and guidance to local agencies administering the child welfare services programs which involve the licensing/approval of Foster Family Homes.

INFORMATIVE DIGEST

Assembly Bill 1695 (Chapter 653, Statutes of 2001) modifies existing statutes in various substantive and technical ways. The new statutes made the following changes:

- Includes as exempt from the California Community Care Facilities Act, the approved homes of relatives and nonrelative extended family members.
- Revises the requirements for licensure of foster family homes.
- Authorizes the Department of Justice to provide subsequent arrest notification to public agencies for the approval of relative caregivers and nonrelative extended family members.
- Clarifies that the standards used to evaluate and grant or deny approval of the home of a relative or the home of a nonrelative extended family member for the placement of a child shall be the same standards as set forth in regulations for licensing foster family homes.
- Clarifies safety requirements regarding placement in a relative's home in specified instances.
- Clarifies the list of homes into which a dependent child or a ward of the juvenile court may be placed to specifically include the approved home of a relative or the home of a nonrelative extended family member.

In addition to the regulatory changes implementing provisions of AB 1695, the proposed emergency regulations make editorial and nonsubstantive changes (i.e., reformatting, renumbering, and grammatical corrections). Regulatory and handbook material is being adopted to reflect current statutory requirements.

COST ESTIMATE

1. Costs or Savings to State Agencies: Additional expenditures of approximately \$492,000 in the current State Fiscal Year. It is anticipated that State agencies will request an increase in the currently authorized budget level for the 2001-02 fiscal year.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: Additional expenditures of approximately \$321,000 in the current State Fiscal Year.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553 and 10554. Subject regulations implement and make specific Health and Safety Code Sections 1505, 1521.5, 1521.6 and 1525.5; Penal Code Section 11105.2; Welfare and Institutions Code Sections 309, 319, 361.2, 361.3, 361.4, 361.5, 362.7, 366, 366.1, 727, 11400, 11401, 11402, 11461, 16504.5, 16507.5, and 16518; and Public Law 105-89 (Adoption and Safe Families Act of 1977).